

Editor's note: Set aside by order dated Aug. 21, 1972 -- See 6 IBLA 236A below; See also U.S. v. Kiggins, 24 IBLA 187 (March 18, 1976).

EVELYN M. KIGGINS et al.

IBLA 72-121

Decided June 26, 1972

Appeal from decision of Office of Appeals and Hearings, Bureau of Land Management, rejecting verified statement, Oregon 012727-A.

Affirmed.

Mining Claims: Surface Uses

A verified statement filed pursuant to 30 U.S.C. § 613 (1970) is properly rejected to the extent that it covers mining claims previously declared null and void.

APPEARANCES: Irving Rand, for the appellant.

OPINION BY MRS. LEWIS

Evelyn M. Kiggins, et al 1/ have appealed from a decision of the Office of Appeals and Hearings, Bureau of Land Management, dated May 15, 1969. The Office of Appeals and Hearings held that, as the Vermilion and Vermilion No. 2 lode mining claims here involved had been declared null and void by the Department of the Interior, it was proper for the land office to reject the verified statement relating to these claims.

Appellants assert that it was a violation of due process for the land office to reject a verified statement as to the Vermilion and Vermilion No. 2 Claims without a hearing. They further contend that such a hearing is required by the Act of July 23, 1955, § 5, 30 U.S.C. § 613 (1970).

The Act of July 23, 1955, supra, provides, inter alia, that a verified statement may be filed by a person claiming rights under any unpatented mining claim located prior to the date of the Act, and that the Secretary of the Interior will fix a time and place for a hearing on any such verified statements timely filed.

However, although a verified statement listing the Vermilion and Vermilion No. 2 lode mining claims was timely filed in response

1/ The appellants also include Murray M. Kiggins, James A. Kiggins, and Ester Kiggins.

to a notice first published October 10, 1962, these two claims were declared null and void by a hearing examiner after notice and a hearing held in Portland, Oregon, on October 9, 1964. On appeal, the decision of the hearing examiner was affirmed by the Department, United States v. Evelyn M. Kiggins, et al., A-30827 (July 12, 1968). That decision extinguished the subject mining claims including any rights to the vegetative or other surface resources thereon. Thereafter the subject verified statement served no useful purpose. The decision rejecting the verified statement was proper.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision appealed from is affirmed.

Anne Poindexter Lewis, Member

We concur:

Newton Frishberg, Chairman

Frederick Fishman, Member

AUGUST 21, 1972

IBLA 72-121 : Oregon 0127727-A
UNITED STATES : Petition for Reconsideration
v. of Mining Claim Contest
Oregon 013204 (A-30827).
EVELYN M. HIGGINS et al. :

ORDER

During the consideration of appeal, IBLA 72-121, there was a pending Petition for Reconsideration of the departmental decision of July 12, 1968, A-30827, which inadvertently had not been included in the case record. The Board has decided to honor the request for reconsideration. Inasmuch as the ultimate decision in Oregon 013204 may be determinative of the issues in 0127727-A, we deem it proper to set aside our decision of June 26, 1972, IBLA 72-121, until we have had an opportunity to review the entire record and it is so ordered. No action will be taken in regard to the Vermillion mining claims until a further decision by this Board relative thereto.

Poindexter Lewis, Member

Anne

We concur:

Newton Frishberg, Chairman

Frederick Fishman, Chairman

cc: Irving Rand, Esq.
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